



Archaeological Resources Protection Act

BACKGROUND:

In 1906 Congress enacted the Antiquities Act to deal with looting and vandalism of archaeological sites on public lands. The Act established a criminal penalty of a \$500 fine and/or imprisonment for 90 days. Based on conditions in 1906 when large numbers of archaeological sites had not been affected and high quality artifacts sold for only a few dollars apiece, this penalty was considered sufficient. The problem worsened over time until, by the 1970's, individual artifacts were selling for thousands of dollars and many archaeological sites on public lands were being damaged or destroyed by looting and vandalism. A study conducted for Congress in 1987 found that looting and vandalism had caused damage to 32 percent of the known sites on National Park Service, Forest Service, and Bureau of Land Management lands in the Four Corners states. The penalties of the 1906 Act clearly were no longer commensurate with the severity of the problem. In 1974 the Antiquities Act was declared unconstitutionally vague by the Ninth Circuit Court of Appeals, and a subsequent attempt to prosecute violators under other federal statutes was unsuccessful. Congress responded to this situation by enacting the Archaeological Resources Protection Act of 1979 (ARPA). ARPA, as amended in 1988, significantly strengthens the penalties for looting and vandalizing archaeological sites on public and Native American lands and places important protection and management responsibilities on federal agencies, such as the Department of Energy (DOE).

STATUTES:

Antiquities Act of 1906

Archaeological Resources Protection Act of 1979, as amended.

REGULATIONS:

18 Code of Federal Regulations (CFR) part 1312¹: *Protection of archaeological resources: uniform regulations.*

36 CFR part 79: *Curation of federally-owned and administered archaeological collections.*

REFERENCES:

U.S. Department of Energy

Office of Air, Water and Radiation Protection Policy and Guidance (EH-41) Information Brief. *Native American Graves Protection and Repatriation Act*. EH-232-0003/1092r. October 1992, revised February 2006.

Office of Air, Water and Radiation Protection Policy and Guidance (EH-41) Information Brief. *Consultation with Native Americans*. DOE/EH-41-0019/1204. December 2004.

Office of Environment, Safety and Health. *Environmental Guidelines for Development of Cultural Resource Management Plans—Update*. DOE G 450.1-3. September 22, 2004.

Office of Environment, Safety and Health. *Department of Energy Management of Cultural Resources*. DOE P 141.1. May 2, 2001.

Office of Environmental Guidance (EH-231)² Memorandum. *Management of Cultural Resources at Department of Energy Facilities*. February 23, 1990.

¹ Uniform regulations were promulgated by four federal agencies and are, thus, found in four different places in the CFR: Tennessee Valley Authority in 18 CFR part 1312; Department of Defense in 32 CFR part 229; Department of Agriculture, Forest Service in 36 CFR part 296; and the Department of the Interior, Office of the Secretary in 43 CFR part 7, subpart A. In addition, the Department of the Interior has issued department specific supplemental regulations found in 43 CFR part 7, subpart B.

² Currently known as the Office of Air, Water and Radiation Protection Policy and Guidance (EH-41).

REFERENCES (cont.):

U.S. Department of the Interior, National Park Service

Technical Brief No. 11. *Legal Background of Archaeological Resources Protection*. Carol Carnett. September 1991.

Technical Brief No. 16. *The Civil Prosecution Process of the Archaeological Resources Protection Act*. Sherry Hutt. 1994.

Technical Brief No. 17. *Developing an Archeological Site Conservation Database*. Robert M. Thorne. April 1996.

National Trust for Historic Preservation

Archaeological Resource Protection. Sherry Hutt, Elwood W. Jones, and Martin E. McAllister. The Preservation Press, National Trust for Historic Preservation. Washington, D.C. 1992.

Protection and management of archaeological resources on federal and Indian lands

ARPA contains measures to protect archaeological resources on federal and Indian lands including provisions for felony level penalties for those convicted of serious violations, as well as civil penalties and forfeiture of vehicles and equipment. ARPA also established new procedures for federal land managers to issue permits for authorized excavation and removal of archaeological resources from the land they manage. Four federal agencies have developed uniform regulations, *Protection of Archaeological Resources*, implementing provisions of ARPA. These regulations establish uniform definitions, standards, and procedures to be followed by all federal land managers in providing protection for archaeological resources located on public and Indian lands of the United States.

Definitions

Definitions of important terms used in ARPA are provided in **Section 3** of the Act.

Archaeological resource “means any material remains of past human life or activities...” that are at least 100 years of age and include, but are not limited to: “pottery, basketry, bottles, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items.”

Indian lands “means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or Indian individual.”

Indian tribe “means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village

corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act....”

Other terms defined in the statute and regulations include:

- *Federal land manager,*
- *public lands,*
- *person,*
- *State,*
- *archaeological interest,*
- *material remains, and*
- *arrowhead.*

Federal agencies' compliance with ARPA

All federal agencies must comply with ARPA. The protection of archaeological resources that remain in or on these lands must be ensured and their confidentiality and characteristics maintained.

Permits to authorize excavation and removal of archaeological resources from federal lands

Section 4 of ARPA and **Sections 5-12** of the uniform regulations establish a permitting system through which federal agencies can authorize professional scientific excavation and removal of archaeological resources from their lands. Permits for these activities can still be issued under the Antiquities Act of 1906, but ARPA is now the standard federal archaeological permitting authority. Important provisions of these sections of the law and the regulations deal with applications for permits, the requirements to be met for permit issuance, consultation with Indian tribes regarding permits, and suspension and revocation of permits.

Regulation of archaeological resources removed from federal lands

Section 5 of ARPA gives the Secretary of the Interior the authority to promulgate regulations controlling the disposition of all archaeological resources removed from federal land pursuant to the Act and other applicable statutes. **Section 13** of the uniform regulations states that, “Archaeological resources excavated or removed from the public lands remain the property of the United States.” Procedures for curation of federally owned and administered collections of archaeological resources are established in 36 CFR part 79. Native American human remains and cultural items held by federal agencies are subject to repatriation under the Native American Graves Protection and Repatriation Act. (See the EH-41 Information Brief, *Native American Graves Protection and Repatriation Act*.)

Criminal penalties for unauthorized acts

In the absence of an appropriate **Section 4** permit or exemption, **Section 6** of ARPA prohibits excavating, removing, damaging, or otherwise altering or defacing archaeological resources on federal or Indian lands or attempting to commit such acts. Also prohibited is trafficking of archaeological resources removed illegally from federal or Indian lands or those taken in violation of state or local law when they are moved in interstate or foreign commerce. Except for the removal of arrowheads from the surface of the ground, which is exempted, the penalties³ for knowingly violating or counseling, procuring, soliciting, or employing any other person to violate any of ARPA’s prohibitions are:

- a fine of not more than \$10,000 or imprisonment for not more than one year, or both, when the commercial or archaeological value and the cost of restoration and repair of the resources involved are \$500 or less (a misdemeanor),
- a fine of not more than \$20,000 or imprisonment for two years, or both, when these values exceed \$500 (a felony), and
- a fine of not more than \$100,000 or imprisonment for five years, or both, in the case of a second or subsequent such felony violation.

Procedures for determining archaeological or commercial value and cost of restoration and re-

pair are established in **Section 14** of the uniform regulations.

Civil penalties for unauthorized acts

Except for the removal of arrowheads from the surface of the ground, which is exempted, **Section 7** of ARPA and **Sections 15** and **16** of the uniform regulations allow violators of the Act to be assessed civil penalties as follows:

- for the first violation the full cost of restoration and repair plus the archaeological or commercial value and
- for a second or subsequent violation double the cost of restoration and repair plus double the archaeological value or commercial value.

The federal agency involved assesses the civil penalty. The violator may pay the amount assessed or request a hearing for judicial review of the penalty. **Section 7** of ARPA and **Sections 15, 16, and 37** of the uniform regulations establish administrative procedures for assessing civil penalties and penalty hearings. **Section 8** of ARPA states that civil penalties for violations on Indian lands are payable to the Indian or Indian tribe involved.

Rewards for information leading to convictions

Section 8 of ARPA authorizes the payment of a reward of one half the fine or penalty, not to exceed \$500, to any person or persons providing information leading to a criminal conviction or the finding of a civil violation of the Act. Upon certification by the federal agency, the reward is paid by the Secretary of the Treasury from the fines or penalties collected.

Forfeiture of archaeological resources, vehicles, and equipment involved in violations

All archaeological resources and all vehicles and equipment involved in a violation of the Act are subject to forfeiture under **Section 8** of ARPA. These items may be forfeited upon conviction for a criminal violation; assessment of a civil penalty; or determination by a court that the archaeological resources, equipment, or vehicles were involved in a violation. Forfeitures are to the United States for violations on federal lands or to the Indian tribe involved for those on Indian lands.

³ The Omnibus Crime Control Act of 1984 uniformly increased the maximum fines for all violations of federal law to \$100,000 for misdemeanors and \$250,000 for felonies.

Confidentiality of archaeological resource information

Section 9 of ARPA states that information on the nature and location of archaeological resources on federal and Indian lands will not be made available to the public when disclosure will create a potential for harm to the resources. It also specifically exempts information on archaeological resources from Freedom of Information Act (FOIA) requests.

Additional responsibilities of federal agencies for archaeological protection and management

Section 10 of ARPA requires each federal agency to:

- promulgate agency regulations for implementing the Act (consistent with the uniform regulations), as may be appropriate for carrying out their functions and authorities under the Act;
- establish a program to increase public awareness of the significance of archaeological resources and the need to protect them; and
- submit an annual report to Congress on the public awareness program.

Also, under **Section 21(d) of the uniform regulations** each federal agency (other than the four that developed the regulations) is encouraged to:

- develop plans to survey for archaeological resources on all lands under its control,
- prepare schedules for surveys to improve protection and management of archaeological resources, and
- develop an agency reporting system for suspected violations of the Act.

Section 19 of the uniform regulations implements the reporting requirements in **Sections 10(c), 13, and 14** of the Act. That section of the regulations requires the Secretary of the Interior to prepare a comprehensive report on activities carried out under provisions of the Act, based on information provided by other federal agencies. Providing information to the Secretary of the Interior fulfills DOE's responsibilities under those sections of the Act. DOE's input to the annual report is posted on the EH-41 web site each year.

Questions of policy or questions requiring policy decisions will not be addressed in EH-41 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Lois Thompson, Office of Air, Water and Radiation Protection Policy and Guidance, EH-41, (202) 586-9581; fax: (202) 586-3915; e-mail: Lois.Thompson@eh.doe.gov.